

AMENDED IN ASSEMBLY AUGUST 23, 2004

AMENDED IN ASSEMBLY AUGUST 17, 2004

AMENDED IN ASSEMBLY JULY 23, 2004

AMENDED IN ASSEMBLY JUNE 29, 2004

AMENDED IN ASSEMBLY MAY 24, 2004

AMENDED IN SENATE JANUARY 5, 2004

SENATE BILL

No. 391

Introduced by Senators Florez and Escutia

February 20, 2003

~~An act to add Chapter 3.5 (commencing with Section 105230) to Part 5 of Division 103 of the Health and Safety Code, relating to public health. An act to add Sections 12996.5, 12997.5, and 12997.7 to the Food and Agricultural Code, relating to pesticides.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 391, as amended, Florez. Pesticide drift exposure.

Under existing law, the Department of Pesticide Regulation is charged with enforcing pesticide laws and regulations, *violation of which is subject to criminal and civil sanctions and penalties*. Existing law establishes the Department of Pesticide Regulation Fund.

Existing law establishes reporting requirements relating to pesticide poisoning, and requires the Office of Environmental Health Hazard Assessment to develop and implement a program to alert physicians and others regarding symptoms, diagnosis, and treatment.

~~This bill would establish the Pesticide Drift Exposure Response Act to be administered by the department for the purposes of providing~~

~~education and training and reimbursement to local emergency medical services providers and health care providers for the costs associated with nonoccupational exposure to pesticide drift.~~

~~The bill would establish the Medical Reimbursement Account within the fund in which funds recovered for medical costs from persons responsible for a pesticide incident would be deposited.~~

This bill would, in addition to other penalties, make any person found to have violated provisions relating to pesticides, liable for certain costs related to a resulting illness or injury. The bill would provide that the exposure of each person to pesticide shall constitute a separate violation of related provisions, thereby imposing a state-mandated local program by changing the disposition of a crime.

~~This bill would require the California Environmental Protection Agency to establish minimum standard protocols for these the purposes of amending area plans and would require the certified uniform program agency or administering agency to amend the area plan for emergency response accordingly. By requiring local agencies to comply with these requirements, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide for reimbursement of certain costs from the Department of Pesticide Regulation Fund, and with regard to other nonreimbursed mandates, if any, this bill would provide that, if the Commission on State Mandates determines that the bill contains other nonreimbursed costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.



This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

~~SECTION 1. Chapter 3.5 (commencing with Section 105230) is added to Part 5 of Division 103 of the Health and Safety Code, to read:~~

~~CHAPTER 3.5. PESTICIDE DRIFT EXPOSURE RESPONSE~~

~~105230. (a) This chapter shall be known, and may be cited, as the Pesticide Drift Exposure Response Act.~~

~~(b) The Legislature finds and declares all of the following:~~

~~(1) In prior years pesticide laws and regulations including use restrictions, pesticide posting requirements, buffer zones, and oral notifications have not adequately prevented all pesticide drift exposures.~~

~~(2) Unfortunately, large scale pesticide exposures on and off of the agricultural fields have continued to take place, primarily from natural offsite airborne movement or “drift” of pesticides.~~

~~(3) Pesticide drift incidents have repeatedly been inadequately handled by emergency response personnel and health care providers and inappropriate treatment of the victims of exposure has resulted.~~

~~(4) Lack of coordination among county and state agencies, little training in diagnosis and treatment of illness or conditions resulting from pesticide drift exposure, and lack of related funding have all contributed to the problem.~~

~~(5) The purpose of this chapter is to ensure that the victims of pesticide drift exposure receive immediate, comprehensive, and respectful attention during and following pesticide drift exposure incidents.~~

~~(c)~~

1 SECTION 1. Section 12996.5 is added to the Food and
2 Agricultural Code, to read:

3 12996.5. (a) For the purposes of this chapter:

4 (1) "Office" means the Office of Environmental Health
5 Hazard Assessment.

6 (2) "Department" means the Department of Pesticide
7 Regulation.

8 (3) "Certified Unified Program Agency" or "CUPA" means
9 the agency certified by the Secretary for Environmental Protection
10 to implement the unified program specified in Chapter 6.11
11 (commencing with Section 25404) of Division 20, *of the Health*
12 *and Safety Code* within a jurisdiction.

13 ~~(4) "Administering agency" means the local agency~~
14 ~~authorized, pursuant to Section 25502.~~

15 ~~(5) —~~

16 (4) "Agency" means the California Environmental Protection
17 Agency.

18 ~~(6) "Nonoccupational exposure to pesticide drift" means that~~

19 (5) "Nonoccupational" means that the person exposed to the
20 pesticide was not at the time of the exposure performing work as
21 an employee.

22 ~~(7) "Fund" means the Department of Pesticide Regulation~~
23 ~~Fund.~~

24 ~~(8) "Medical Reimbursement Account" means the account~~
25 ~~established within the fund pursuant to subdivision (d) of Section~~
26 ~~105231.~~

27 ~~105231. — (a) The department shall administer this chapter.~~

28 ~~(b) The department, in conjunction with the State Department~~
29 ~~of Health Services and stakeholders representing emergency~~
30 ~~services providers and health care providers, shall by July 1, 2005,~~
31 ~~adopt regulations to coordinate a process for reimbursement of~~
32 ~~local emergency medical services response costs and health care~~
33 ~~provider costs. The regulations shall establish eligibility claim~~
34 ~~criteria and shall utilize a reimbursement schedule existing~~
35 ~~immediately preceding January 1, 2005, applicable to~~
36 ~~reimbursement of costs associated with the provision of~~
37 ~~emergency medical services.~~

38 ~~(c) The department shall determine whether a pesticide~~
39 ~~exposure incident triggering the need for reimbursement for~~
40 ~~medical claims has occurred, and the State Department of Health~~

1 ~~Services shall administer reimbursement for emergency services,~~
2 ~~health care providers, and individuals who have paid medical bills~~
3 ~~for these services.~~

4 ~~(d) The Medical Reimbursement Account is hereby established~~
5 ~~within the Department of Pesticide Regulation Fund. Moneys in~~
6 ~~the account shall be available for expenditure for purposes of this~~
7 ~~chapter upon appropriation by the Legislature.~~

8 ~~(e) In addition to the existing civil penalty authority in Section~~
9 ~~12999.5 of the Food and Agricultural Code and Section 6130 of~~
10 ~~Title 3 of the California Code of Regulations, the Department of~~
11 ~~Pesticide Regulation, county agricultural commissioners, and~~
12 ~~district attorneys may recover actual and projected medical costs,~~
13 ~~including emergency medical transport resulting from a pesticide~~
14 ~~exposure incident, as set forth in subdivisions (b) and (c), from any~~
15 ~~person or business responsible for violations of Chapter 2~~
16 ~~(commencing with Section 12751) or Chapter 3 (commencing~~
17 ~~with Section 14001) of Division 7 of the Food and Agricultural~~
18 ~~Code, or Sections 6000 through 6920 of Title 3 of the California~~
19 ~~Code of Regulations, that cause or contribute to the pesticide~~
20 ~~exposure incident in question. Money collected for recovery of~~
21 ~~medical costs shall be paid into the Medical Reimbursement~~
22 ~~Account of the Department of Pesticide Regulation Fund.~~

23 ~~(f) The department shall inform medical providers of the~~
24 ~~availability of the medical reimbursement account through~~
25 ~~medical training, including, but not limited to, training offered by~~
26 ~~the office or the State Department of Health Services.~~

27 ~~105232. —The office shall consult with the Emergency Medical~~
28 ~~Services Authority regarding the adequacy of emergency medical~~
29 ~~services personnel training in responding to pesticide drift.~~

30 ~~105234. —(a) The agency with the advice and assistance of the~~
31 ~~department, the office, county agricultural commissioners, local~~
32 ~~health officers, the CUPAs, and directly affected community~~

33 ~~(6) “Acute” means a medical condition that involves a sudden~~
34 ~~onset of symptoms due to an illness, injury, or other medical~~
35 ~~problem that typically requires prompt medical attention and that~~
36 ~~has a limited duration.~~

37 ~~(7) “Uncompensated medical care” means the cost of care not~~
38 ~~covered by any other program, including, but not limited to~~
39 ~~copayments for medical insurance, Healthy Families Program, or~~

1 *Medi-Cal. Reimbursed medical costs shall not exceed the*
2 *reasonable and customary charges for that treatment.*

3 *(b) The exposure of each person to a pesticide resulting from*
4 *the violation of Section 12972 or 12973, or any regulation adopted*
5 *pursuant to Section 12976, 12981, or 14005, that causes acute*
6 *illnesses or injury, shall constitute a separate violation of the*
7 *statute or regulation.*

8 *SEC. 2. Section 12997.5 is added to the Food and*
9 *Agricultural Code, to read:*

10 *12997.5. (a) In addition to any penalties paid in connection*
11 *with an enforcement action taken pursuant to Sections 12996,*
12 *12997, 12999, and 12999.5, any person who is found in violation*
13 *of any provision of this division or any regulation adopted*
14 *pursuant to this division that results in illness or injury requiring*
15 *emergency medical transport or immediate medical treatment of*
16 *any individual in a nonoccupational setting from any agricultural*
17 *use, shall be liable to the individual harmed or to the medical*
18 *provider for the immediate costs of uncompensated medical care*
19 *from acute injuries and illnesses of the exposed individual.*

20 *(b) Any order issued in connection with a finding of a violation*
21 *as described in subdivision (a) shall include the obligation to*
22 *reimburse medical costs from acute illnesses and injuries of any*
23 *individual requiring immediate medical treatment as a*
24 *consequence of this violation to the injured individuals or their*
25 *medical providers.*

26 *(c) Any person found in violation of this section shall submit to*
27 *the director within 30 days of the final determination of liability,*
28 *a written plan on how they will pay individuals and medical*
29 *providers for the emergency medical transport and the immediate*
30 *medical costs from acute medical injuries and illnesses of all*
31 *individuals requiring immediate medical treatment as a*
32 *consequence of the violation. A person alleged to have violated*
33 *subdivision (a) may voluntarily submit a written plan pursuant to*
34 *this section prior to the determination of liability. The contents of*
35 *the voluntary plan shall not be held against the person in any*
36 *action to determine whether the person violated those provisions.*

37 *(d) Any violation of this section shall be subject to the criminal*
38 *and civil sanctions and penalties set forth in this division.*

39 *(e) Payment of emergency medical costs pursuant to this*
40 *section shall not preclude an affected person from filing a civil*

1 *action for injuries, illnesses, or costs related to the incident. Any*
2 *damage award associated with a civil action related to the incident*
3 *shall be reduced by the amount the plaintiff received from this*
4 *section.*

5 *(f) For any person who provides for the immediate*
6 *reimbursement of medical costs for acute medical illnesses and*
7 *injuries prior to a final determination by the department, the*
8 *director or agricultural commissioner may reduce, by not more*
9 *than 50 percent, the fines imposed pursuant to Section 12996.5.*
10 *This reduction shall not limit the responsible party's financial*
11 *obligation under this section. The department or agricultural*
12 *commissioner shall attempt to complete the determination within*
13 *45 days of the incident.*

14 *SEC. 3. Section 12997.7 is added to the Food and*
15 *Agricultural Code, to read:*

16 *12997.7. (a) The agency, in consultation with the*
17 *department, the office, county agricultural commissioners, local*
18 *health officers, CUPAs, and affected community members, shall by*
19 *August 31, 2005, establish minimum standard protocols for the*
20 *purposes of amending CUPA area plans.*

21 *(b) The protocols shall include, but not be limited to, all of the*
22 *following:*

23 *(1) Protocols for requesting and providing immediate access to*
24 *pesticide-specific information necessary to assist emergency*
25 *medical services personnel in identifying pesticides that may be*
26 *causing a pesticide drift exposure incident and appropriate*
27 *treatments, including a 24-hour accessible telephone number for*
28 *contacting the applicator listed on the notice of intent. treatments.*

29 *(2) Protocols to delineate specific agency responsibilities and*
30 *the process for responding to calls, notifying residents, and*
31 *coordinating evacuation, if needed.*

32 *(3) Protocols to establish emergency shelter procedures and*
33 *locations to be used in the event evacuation is needed.*

34 *(4) Protocols to access services in all languages known to be*
35 *spoken in the affected area in accordance with Section 11135 of the*
36 *Government Code.*

37 *(5) Protocols to ensure access to health care within 24 hours of*
38 *the exposure and up to a week after the exposure.*

39 *(6) Protocols to notify medical providers regarding eligibility*
40 *for reimbursement pursuant to Section 12997.5.*

(c) The CUPA or administering agency shall amend the area plan for emergency response, pursuant to subdivision (c) of Section 25503, to specifically address pesticide drift exposure and to incorporate provisions ~~conforming the area plans to~~ of the protocols of subdivision (b).

~~(d) By July 1, 2006, or upon review of the area plan, whichever is sooner, all CUPAs or administering agencies shall have incorporated a pesticide drift component into their area plans.~~

~~(e) The minimum standard protocols developed under subdivision (a) are not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(f)~~

(d) Upon the next scheduled update of the area plan, all CUPAs shall have incorporated a pesticide drift component into their area plan.

(e) The minimum standard protocols developed under subdivision (a) shall be in accordance with the California Environmental Protection Agency's ~~environmental justice~~ guidelines.

~~105238. The department shall enter into interagency agreements with the agency and the State Department of Health Services to annually pay those agencies, from moneys within the fund, their share of the state costs of administering this chapter, and shall enter into reimbursement agreements with local agencies to annually reimburse those agencies, from moneys within the fund, for their state-mandated local costs of administering and complying with this chapter.~~

~~105240. The adoption, amendment, or repeal of a regulation for implementing this chapter, including, but not limited to, fee assessment and collection, and subsequent amendments or adjustments authorized by this chapter, are hereby deemed to be emergency regulations necessary for the immediate preservation of the public peace, health, and safety or general welfare. Regulations adopted, amended, or repealed pursuant to this chapter are hereby exempted from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). However, upon adoption, the regulation, amendment, or~~

1 ~~repeal shall be filed with the Secretary of State and printed in the~~
2 ~~California Code of Regulations.~~

3 ~~SEC. 2. Notwithstanding Part 7 (commencing with Section~~
4 ~~17500) of Division 4 of Title 2 of the Government Code,~~
5 ~~reimbursement of local costs mandated by this act shall, upon~~
6 ~~appropriation by the Legislature, be made by the Department of~~
7 ~~Pesticide Regulation from funds in the Pesticide Regulation Fund,~~
8 ~~pursuant to reimbursement agreements entered into with local~~
9 ~~agencies, under Chapter 3.5 (commencing with Section 105230)~~
10 ~~of Part 5 of Division 103 of the Health and Safety Code.~~

11 ~~However, notwithstanding Part 7 (commencing with Section~~
12 ~~17500) of Division 4 of Title 2 of the Government Code, if the~~
13 ~~Commission on State Mandates determines that this act contains~~
14 ~~other nonreimbursed costs mandated by the state, reimbursement~~
15 ~~to local agencies and school districts for those costs shall be made~~
16 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
17 ~~4 of Title 2 of the Government Code. If the statewide cost of the~~
18 ~~claim for reimbursement does not exceed one million dollars~~
19 ~~(\$1,000,000), reimbursement shall be made from the State~~
20 ~~Mandates Claims Fund.~~

21 *SEC. 4. No reimbursement is required by this act pursuant to*
22 *Section 6 of Article XIII B of the California Constitution for*
23 *certain costs that may be incurred by a local agency or school*
24 *district because in that regard this act creates a new crime or*
25 *infraction, eliminates a crime or infraction, or changes the penalty*
26 *for a crime or infraction, within the meaning of Section 17556 of*
27 *the Government Code, or changes the definition of a crime within*
28 *the meaning of Section 6 of Article XIII B of the California*
29 *Constitution.*

30 *However, notwithstanding Section 17610 of the Government*
31 *Code, if the Commission on State Mandates determines that this*
32 *act contains other costs mandated by the state, reimbursement to*
33 *local agencies and school districts for those costs shall be made*
34 *pursuant to Part 7 (commencing with Section 17500) of Division*
35 *4 of Title 2 of the Government Code. If the statewide cost of the*
36 *claim for reimbursement does not exceed one million dollars*
37 *(\$1,000,000), reimbursement shall be made from the State*
38 *Mandates Claims Fund.*

O